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April 17, 2012

BY ECF

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
United States Courthouse
Room 1416 S
225 Cadman Plaza East
Brooklyn, New York 11201

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 19 2012 ★
BROOKLYN OFFICE

United States v. City of New York, 07-CV-2067 (NGG)

Dear Judge Garaufis:

I am writing to request a modification to the Court's Order Appointing Special Master ("Order"). (Dkt. No. 448). The Order states that the Special Master "may not communicate with a party or a party's counsel or staff on an ex parte basis." (*Id.* ¶ 11). I have interpreted this prohibition to extend to my representatives, including my testing consultant, Dr. Shane Pittman.

On February 1, 2012, the Court approved the City's motion asking the Court to appoint Dr. Pittman as the third member of the Exam 2000 Test Validation Board ("TVB"). (Dkt. No. 802, at 11). In light of that order, the three members of the TVB will be an individual to be nominated by the Uniformed Firefighters Association of Greater New York, the City's testing expert and Dr. Pittman. (*Id.*; Dkt. No. 776, at 11). No representative of the United States or the Plaintiffs-Intervenors will directly participate in the TVB process.

In order to prepare for and/or participate in the TVB process, Dr. Pittman will need to communicate directly with the City's testing expert outside the presence of representatives of the other parties. Accordingly, I request that the Order be modified to permit Dr. Pittman to communicate *ex parte* with the City's testing expert, provided such communications are limited to matters relating solely to the TVB process. All parties have consented to this modification of the Order. The City has agreed to provide periodic reports on the TVB process to the other parties, if appropriate and as permitted by the TVB Guidelines. While we anticipate that there will also be communications between Dr. Pittman and the Union Representative, no modification to the Order is necessary for those communications because the Union is not a party.

Respectfully submitted,

/s/ Mary Jo White

Mary Jo White

Application granted.
for order
s/Nicholas G. Garaufis

4/17/12

cc: All Counsel of Record